Supreme Court, U.S.
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In The
Supreme Court Of The United States.

APS

V.

Minnesota Department Of Labor
&
Office Of Administrative Hearings

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit.

Brief Fore Petitioner

Pro Se
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QUESTION PRESENTED

Whether The court of appeals can Exclude People with Disabilities, Just Because they Do not Like them And Not Consider Evidence, complaint Or Jurisdiction statements as Follows: 28 U.S.C 1443 28 U.S.C 1441, 28 U.S.C 1331, And the Law Judiciary Act of 1789 article 111 When The eighth circuit does not consider these statutes as Basis fore Jurisdiction, Then How does the Eighth circuit court of appeals and the lower courts have Basis fore Jurisdiction to Here any case, Do they need there Jurisdiction Redefined.

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IN THE
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and Office of administrative Hearings

UNPUBLISHED OPINIONS BELOW

The Unpublished opinion Fore the Eighth circuit court of Appeals Is No. 07-2850

US. District court District of Minnesota Listed Civil No. 06-4495 ADM/RLE Unpublished

State court of Appeals A06-191, crime Victims. Administrative Hearings crime victims # 2254 And Work comp 10/20/06 WC06-163

Jurisdiction.

The Judgment of the court of appeals was Entered on January 14, 2009. The Jurisdiction of this Court is invoked Under 28 U.S.C. 1254(1)

The Eighth circuit court of apeals and the Minesota District court had Jurisdiction of this case Under 28 U.S.C. 1331 And 28 U.S.C. 1441 And 28 U.S.C 1443 And the Law judiciary act of 1789 article 111

STATEMENTS

While Building the Paul Wellstone Battered Woman's Shelter I was Assaulted.

I Severely Lost Motion in My neck and The Mayo clinic Rochester Documented A Traumatic Brain Injury.

Nuclear Imaging of my brain Showed Reduced uptake in the frontal cortex bilaterally with extension into the left parietal cortex and the anterior aspect of the temporal lobes. Decreased uptake into both basal ganglia and the right thalamus.

Tests: On how Brain Works or does not work:

Basic Skills, Average score is 77 I'm at 6

Auditory I score 55 Extremely Impaired

Alertness Visual 0 Extremely Impaired

Steadiness Visual 0 Extremely Impaired.

Visual Specific "ASQ" 0 Extremely Impaired

Combined Attention Caq 0 extremely Impaired

righting Average is 62 I'm a 1

Attention Mental control Avg. 59 I'm <1 3

Spatial Processing Avg is 64 I score 1

Reaction Time Avg is 75 I score 5

General Cognitive Functioning Avg is 78 I'm 7

Reading Average is 88 I'm A 21

This case Is Of Great Public Importance Because It is Acceptable to Assault People With Disabilities, Just Because People do not Like them.

The Minnesota Appellate Court Had aforementioned evidence And Denied Crime Victims' Benefits Because The EEG was normal.

5. Exhibit 2 Page 2 docket 31 Submitted Buy the Attorney General.

Jennifer Paterson statement of Issues 10/20/06
4. Does a Minnesota workers compensation Act, deny due Process or Equal Protection of Law to people with Mental and brain Injuries.

There were five service attempts, Serve the State Attorney general was not listed in local rules.
There were Nine Unsuccessful Attempts to Amend My Complaint to Add Evidence. I delivered 118 Pages of evidence 4 times.

And Honorable Anne Montgomery Disregards My Jurisdiction Statements 28 U.S.C 1441 and 28 U.S.C 1443 and 28 U.S.C 1331 As though they do not exist. And dismisses My case Under rule 8(a) when The only notice given to me was A 12(b)(6) Motion.
Just because she does not Like a class of People With no regard Fore What Is In My complaint.

I Was denied Meaningfully Participate In the Work comp System Because Of My Disability's I asked Fore Reasonable Accommodation It Was Denied Me. I Believe I have a disability As Defined Buy The Americans With Disabilities Act Of 1990. That effects Major Life activities Of Work and Caring Fore Myself And Reading If I Read Court rules I can not Remember One Thing I need To See How Someone else Filed a Motion Or A brief I cannot follow Written Instructions well I Have A Hard time Visualizing them, Understanding Instructions at work I have to Wright down Multiple Tasks. If I cannot see What I'm Working on, .I cannot Visualize It, Like If I'm Cutting A Angle On a Peace Of Wood I have to See where It Goes While I'm Cutting it otherwise I canot Visualize It.
I Have Difficulties with Multi Tasks Like Cleaning Up after Myself I do It all At Once, Instead of as I go, Its the Same With Paper work I Do not organize It, well Every thing Is Randomly Put Away All Disorganized.
In righting this Writ I feel Like I repeat My

self Over and over I Rely cannot totally comprehend More then One Page Or a sentence. I read a sentence when I Look away I cannot Remember What I Just Read. I Have Been a journey Man Carpenter fore 12 Years I can do the Work People Just Have to explain things rely simple Or show me how to do the work.

Or someone Yells at Me Or is disappointed in Me I cannot forget I'm overly sensitive.

It Feels Like the government can exclude me from everything And there is Nothing I can do about it.

But yet the government wants to regulate everything Citizens do Like I have to Have work comp Insurance to work, But If the work comp Judge Can Be Untruthful Or I can be excluded without any regard to the Law what Good is it to me.

The Only Issue Presented To the Eight Circuit

The only issue Petitioners Contention that the District Court Erred in dismissing His Pro se Complaint Without Allowing Him to Present Evidence on his claims. The allegations are Sufficient to Require He Be Provided the opportunity to offer Supporting Evidence When Every One else used evidence

Then it Cites Hanes V. Kerner, 404 U.S. 519 However in artfully Pleaded, are sufficient to call

The opportunity to offer Supporting evidence.
Argument.

Under Rule 8(a)(1) Of the Federal Rules of Civil Procedure, it is not essential that a complaint set forth the statutory basis for the court's jurisdiction, if the facts alleged provide a basis for the assumption of jurisdiction. Thus, "the court may sustain jurisdiction when an examination of the entire complaint reveals a proper basis for assuming Jurisdiction other than one that has been improperly asserted" Wright & Miller, Federal Practice and Procedure, 1206. See also Stewart v. United States , 199 F.2d 517, 520 (7th Cir. 1952); Sikora v. Brenner, 126 U.S. App. D.C. 357 , 379 F.2d 134, 136 (1967); Williams V. United States ,405 F.2d 951 (ninth Cir (1969) Similarly under Rule 8(a)(2) it is not necessary that the plaintiff set forth the legal theory on which he relies if he sets forth sufficient factual allegations to state a claim showing that he is entitled to any relief which the court may grant. See Hostrop v. Board of Junior College District No. 515, 523 F.2d 569 (7th Cir. 1975) cert. denied 425 U.S. 963, 48 L.ed 2d 208, 96 S. Ct. 1748 (1975); 2a Moore's Federal procedure Para . 8.14. As stated by this court in Janke Construction Company, inc v. Vulcan Materials Company , 527 F.2d 772, 776 (7th circuit) The district court Has the duty under Rule 8(a)(2) Of the Federal Rules of Civil Procedure to read a complaint Liberally and to

determine whether the facts set forth Justify it in taking Jurisdiction on grounds other than those Pleaded, if the stated grounds do not provide jurisdiction, and whether the facts set forth state a claim for relief on basis other than the statutory basis pleaded see New York State Waterways Association, Inc. V. Diamond, 469 F.2d (2d Cir 1972)

The Eighth cicuit has Intered a decision that is in conflict with another united states district court Because My complaint was dismissed under Rule 8(a)(1) With No regard fore the Jurisdiction Listed in the complaint. And did Not Liberally construe Complaint.

Under Fed. R. Civ. P 8(a)(1) It is not essential that a complaint set forth the statutory basis for the courts jurisdiction in order for the court to assume jurisdiction, if the facts alleged provide a basis for the assuming Jurisdiction Other than one that has been improperly asserted See Rohler V. Trw, Inc 5fd 76 F.29 1260, 1978 U.S. (7th Cir, May 24th 1978)

Right to Petition as one of the Most precious of liberties Safeguarded by the Bill of Rights (Mine Workers V. Illinois Bar Assn. ,389 U.S. 217, 222 Section 1 Procedural due Process 14th amendment It must give them an opportunity to be heard respecting the judgment sought. I was not given Proper notice that It was an Rule 8(a) Trial but Was Led to believe it was A

12(b)(6)
Equality.- If Due Process is to be secured the laws must operate on all alike. The District court erred in Not Considering Federal Question Jurisdiction 28 U.S.C 1443, 28 U.S.C 1331, and 28 U.S.C 1441

Below Transcripts Of Motion Hearing 06-4495 On 6/33/07 Before Honorable Anne Montgomery

Mr. Strege: I think my Due process Rights have been Violated Here If I'm not allowed to Provide supporting evidence .

Page 23 Strege: I just wish that you'd answer my Letters when I wrought you, to appeal things and What not To Exclude me Because--- Denied Equal Protection Of the Laws

The court : It's A Motion to Dismiss as to whether your complaint States Any Federal Jurisdiction. That's what the Hearing is About

"I'm told this there's seconds Left in the Hearing"

Strege; I guess I'm a little unprepared to do that . Can we Have a motion to set a new trial Date fore this?

The court: This isn't a trial . This is a motion

The court : No its Been Noticed for Today You Had Notice fore a Long time

Notice: A person has notice of a fact if
(1) Has Actual Knowledge Of It

(2)Has received Information about It

(4) Has reason to Know about it .

Rule 8(a) Is not in the Local rules A 12(b)(6) Motion Was what The attorney general filled I had no Notice or reason To Believe It was a 8(a) motion.

court: you tried to come Here instead

Mr. Strege; Well, That's what the judge Told Me To do .
Docket 31 Exhibit 2 Submitted Buy Attorney General
A Minnesota Workers Compensation Judge is Part Of the Executive Branch of government and has no jurisdiction to rule on the constitutionality of provisions of Chapter 176 of Minnesota Statutes The employee' claim that the Minnesota Workers Compensation System Has denied him equal protection of Law or Due Process of law Because he has not had an equal opportunity to participate in court proceedings Because of his Brain and mental disabilities, Is preserved for appeal to the Minnesota Supreme court.

I submitted Evidence that the Work comp Judge reserved the right to appeal constitutional Issues

and did not use the words Minnesota supreme court I should of had the opportunity to Prove the state abrogated its eleventh amendment Immunity Because There were proper Jurisdiction statements in complaint.

Document 61 Memorandum opinion P. 6
Honorable Anne d Montgomery Wrights ;;
A state may be sued in Federal court only if It has consented or Congress has abrogated its immunity Here Plaintiffs Only cognizable claim for damages against Defendants is an action under 42 U.S.C 1983 does not abrogate the states Eleventh Amendment immunity. And the state has not consented to 1983 suits in Federal court Therefore plaintiffs constitutional claims must be dismissed.

Then on Page 3 Memorandum of Hon. ANNE Montgomery Rights, Plaintiffs supporting evidence Which consists of a scattershot collection Of Documents Is Unnecessary and Unhelpful at the Pleading stage Further even if it were considered It would Not Affect the Judicial decision Therefore Plaintiffs appeal is Denied.

The only way Evidence can Not Make something More or Less Probable Is if It does not Exist. So Only Rule 8a(1) was considered, No Jurisdiction statement And She Says evidance was not Considered. " Even If it were considere" Honorable Anne Montgomery

Court must provide all Jurisdiction Facts On the Record Related to the Jurisdiction Asserted. LATINA V. HOPPER , 102 f.2d 188 also see Chicago V. NewYork 37 Supp 50

Listed in complaint, Notice of removal Jurisdiction statements: 28U.S.C 1443, 28U.S.C 1441, 28U.S.C. 1331 These Jurisdiction Statements are Not Regarded when dismissing my complaint Fore Lack of Jurisdiction statement.

Even that Low Constitutional threshold Cannot Justify Beating a deaf student for failure to follow spoken Instructions See pages 25-26 Supre Garrett 531 U.S. at 367

Honorable Anne Montgomery Felt she Did not Have Jurisdiction That would allow Me To state A Claim Or give evidence Then Why Is She Having Me try and State a prima Faxie Case .

There is No discretion To Ignore Lack of Jurisdiction Joyce V. U.S. 474 2d 215

Blacks Law Dictionary Definition of The word Conclusory Is Because the Plaintiffs allegations Lacked supporting Evidence .

Regarding the issue of the complaint deficiency

in allegations proper jurisdiction, it is well settled that where a complaint fails to cite the statue conferring jurisdiction, the omission will not defeat jurisdiction if the facts alleged in the complaint satisfy the jurisdictional requirements of the statute. South park square Ltd v. city of Jackson , 565 F.2d 338, 341 n.2 cert denied, 436 U.S. 946, 98 S. Ct 2849, 56 l. Ed 2d 787 (1977) See Schlesinger v. Councilman, 420 U.S. 738, 744 n9, 95 S. Ct 1300, 1306 n.9/ 43 L Ed. 2d 591 (1975); Smith V. United states ,502 F.2d 512 ,519-20 (5th Cir. 1974); 5 c. Wright and A. Miller ,Federal Practice and procedure 1206 at 77-80 moreover , the district court has a duty under Rule 8(a) of the federal Rules of Civil procedure to read the complaint liberally and determine whether the facts set forth justify it in assuming jurisdiction on grounds other than those Pleaded Rohler v. TRW, Inc., 576 f.2d 1260, 1264 (7th cir 1978) ; New York waterways Association, Inc. V.Diamond, 469 F.2d 419, 421 (2nd Cir. 1972) . Here an examination of the entire complaint reveals a proper basis for assuming jurisdiction under Title VII and the ADA, discrimination in Employment Act Paragraph III of the complaint alleges that Mrs. Hildebrand was unlawfully terminated because of her age and her sex. It states the underlying factual bases for his allegation. Further, Mrs. Hildebrand's EEOC right to sue Letter, though not referred to specifically in the complaint, was attached as an exhibit thereto. under the circumstances, therefore, the district court erred in dismissing plaintiff's complaint for a deficiency in pleading

without allowing them leave to amend.

The eight circuit in agreeing with the lower courts Decision and Its actions, that has so far departed from the accepted and usual Corse of Judicial proceedings as to call For an Exercise of this courts Supervisory Powers. And has Entered a decision contrary to Many other circuit court Decisions calling fore this courts supervisory powers.

Honorable Anne d Montgomery Memorandum Below::
Plaintiffs Second Amended Complaint is rambling, garbled and difficult to Decipher Plaintiff conclusorily alleges that he was denied the right to hire a lawyer during the workers compensation proceeding. His mental disability was not adequately accommodated, certain tape recordings of his statements were altered by Federated Insurance, the compensation judges findings were not supported by evidence, the Department of labor lacks adequate grievance procedures, and plaintiffs private information was improperly Disclosed.
In addition to the aforementioned ADA Rehabilitation act claims, the second Amended complaint alleges violations of procedural and substantive due process under the Fourteenth Amendment the right to petition the government for Redress of grievance under the first amendment and Equal protection clause.

Because she says Amended complaints none

come even close to meeting the short plain statement requirements of rule 8(a). There is no bases in any of the plaintiffs fillings that would allow him to state a viable ADA claim
To say not even come close or No Basis she obviously Only Applied Rule 8(a)(1), Lack of Jurisdiction.
Anne Montgomery states Plaintiff conclusory Alleges Which means Lacks supporting evidance

Education is Perhaps the most Important function of state and local governments because it is Doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education Brown V. Board of education ., 347 U.S. 483,493 (1954)

State institutions of Higher education acted on the same stereotype and Prejudices. Indeed the Higher one goes on the education scale, the lower the proportion of Handicapped people one Finds 28 see Threshold 14

Presumptions arise Evidence is to support an allegation is wanting, and they are indulged to supply the want of proof of a more direct character and cannot be resorted to where such proof is available. A presumption will necessarily DONOUGH, 204 U.S. 8. 51 l.ed 345 , 27 SUPP .ct , Rep 236
GALPIN V. PAGE 18 WALL U.S. 350 , 21 LED. 959 Had I been allowed to offer proof the Attorney General would have to Rebut and

Destroy the evidence. Argument does not Rebut the Governments Presumption. Tangible Evidence is absolutely necessary to do the Job.

For both good and ill, the law can be a teacher. Garett, 531 U.S. at 375 (kenedy,J Concurring As with race discrimination few government messaged more profoundly affect then segregation in education.

Are All these People Being excluded From Education Because they are Not smart, Or Because People do not Like them, And It becomes acceptable To Pick on them or Assault them.
This case I'm Being Excluded because the Government does Not Like a class Of People With Mental disabilities. Even If this class of People can Follow the Procedures, Many Cant There excluded anyway.
Along with all the People Government Does Not Like Maybe they Act Funny Look Different, Hearing Impairment The Government can choose Who it Helps, People with disabilities Get Picked on More and assaulted More And if the government a teacher Or police officer or Mean person. does not Like them Its ok to assault this class of people.

Forty percent of persons with disabilities did not finish Hi school To Thirds of all working age Persons with Disabilities were unemployed only one in fore worked Full time Id at 16-7 Santa Clara Lawyer 855, 887-888 (1975) Children With

mental Disabilities were excluded from any form of public education.

Quoting (ii) Participation in the judicial process: Equal opportunity to Participate in the fair administrative of justice is fundamental to our democratic system .J.e.b. v Alabama, 511 U.S. 127 , 145 (1994)
don't.

Congress and this court Have long acknowledged the Nations History of unfair and often grotesque Mistreatment of persons with Disabilities , Cleburne , 473 U.S. at 545 and 446 Persons with Mental mental disabilities have been subject to Historic Mistreatment, indifference, and hostility doubtless, there have been and there will continue to be instances of discrimination against the retarded that are in fact invidious Alexander V. Choate, 469 U.S. 287,295 n.12 (1985) Well cataloged Instances of invidious discrimination against the Handicapped do exist . -

Access to government the very idea of government Implies a right on the part of its Citizens to petition for a redress of grievances United States V Cruikshank, 92 U.S. 542,552 - 554 (1875) and the right cannot be denied to an entire class of citizens Garret , 531 U.S. at 375 (kenedy J ., concurring but the government canot take Instructions From those it canot see or Hear.

These are statement Made at the federal court Hearing/ Motion Honorable Anne Montgomery Said None Of My statements come Close I believe They Are Adequate If Liberally Construed. She only Applied rule 8(a)(1)

On page 32 it says I need reasonable accommodation I need to have my Hearing on July 5TH recorded do to my brain Malfunction

The next thing is a medical document Mr. Strege reported he had difficulty following directions when given verbal Directions on the Job he stated he Usually said okay But did not know what was being told
And in the record I say no objections "Yeah" "ok" "no"
I remanded the case to federal court
the COURT = you tried to come Hear instead
Mr. STREGE well that's what the judge told me to do
then 40 percent of people with disabilities did not finish hi school .

Then I contacted the department of labor and asked them fore reasonable accommodation
To exclude me because --denied equal protection
Okay on Page 4 it lists four disabilities so I Meet the criteria under the ADA that I have a disability
On three separate occasions I asked Fore accommodation and it was denied Me
The Court : you asked accommodation From DOL

and OAH

STREGE yes
Court ; I'm trying to Figure out why they are the Defendants .
Strege Because I asked for reasonable accommodation from them and there is Practices that seem rely Unfair.

Honorable Anne On page 6 memorandum opinion Says there is no Basis in any of the Plaintiffs Fillings That Would allow him to state viable ADA Claim. I don't think that anybody that did not finish Hi school Has much ADA protection Because of lack of education. If I'm missing the Basis that would allow me to state a claim then Why am I stating a claim .

The next Pages Are taken from my amended complaint. They are adequate to establish Jurisdiction Under rule 8(a) Or 12(b)(6) Should have allowed me opportunity to give evidance.

OAH - DOL deny me with a brain Injury Plus five disabilities the right to Hire A lawyer and would Not accommodate My disability, So I could Understand what was said.

OAH - Denies Benefits on transcripts that could easily Be altered the state holds these transcripts confidential fore every one but me . I could have objected if they accommodated my disability Violates my due process rights 14th amendment to the constitution .

interpret the state constitution Then Oah I don't have Jurisdiction over Discrimination claims

Are OAH DOL under the constitution and ADA law.

Numerous statements of OAH about the constitution.

C.F.R 35.104 Activities covered services and programs .

They had Information On 6 disabilities brain Injury asbergers Disorder So I complained and asked reasonable accommodation and Help Because these tapes were altered OAH - DOL would do nothing They Have no Grievance Procedures 28 C.F.R. 351.70

28 C.F.R Explicitly exclusionary OAH -DOL should Make Insurance Companies Give a copy Of the tape to the Injured person Right after the Interview to avoid Discrimination 28 C.F.R 35.130(B)(7)-b8 I complained all the way to the Assistant Secretary In D.C. there are no grievance procedures.

I remanded to Federal court Oah sent Me to Federal .

That He has Been discriminated against Because of his mental or brain disability can only be perused in an federal Forum Quoting OAH

OAH states that if you want to claim that the MN workers compensation ACT Discriminates Against People with Disabilities Denys Equal Protection Of the Laws I will reserve that Right fore apeal

Along with Procedural Misconduct To state there is past medical treatment and there Is None When OAH DOL -- don't Enforce Any Confidentiality Laws And Insurance company can try and get doctors Not to treat This involves state harm to citizens In violation Of the Due Process 14th amendment unconstitutional treatment 12131

Law 164.30 A covered entity must Reasonably safe guard Protected Information . Entity Must mitigate harmful effects caused buy Association Title II 7.000 A public Entity Must Ensure that communications are Effective to that Disability OAH Had documentation that I had a Brain injury .
The letter states I need Reasonable accommodation To have My hearing on July 5TH Recorded and given to me due to my brain malfunction . I asked for reasonable accommodation so I could review things 28 C.F.R 35.160 Equally Effective communications to Provide Aids 28 C.F.R 35 160 (b)(I) The state refused to accommodate my disability.

1331 Federal Question The district court shall have original Jurisdiction of all Civil action Arising Under the constitution.

Statute 28 U.S.C 1441 I gave notice of Removal of case Because of subject Matter Jurisdiction

Because of alleged violations of the constitution Law Judiciary act of 1789 article 111.02 Of the united states constitution gives congress The power of the federal courts the right to hear this case.

OAH Exclude me because of my disability and I have no recourse to redress Such discrimination Other than federal court .

All of the above are statements of my amended complaint listed on the last two and half pages Congress
When Anne Montgomery says I'm not allowed To state a claim and None of my statements came Close she obviously Only Referred to Rule 8(a)(1) Because the Aforementioned Statements They Had to come close a little Bit And she did not liberally construe the complaint and only considered Rule 8(a)(1), Jurisdiction.

Section 5 Power includes the ability to ensure that constitutional violations are not Left un remedied Because of difficulties of proof. See Hibbs 123 S.ct at 1982: south Carolina .383 U.S. at 314-315

A particular class of Individuals canot be Excluded Participation In court Proceedings See EMPLOYMENT Div V Smith 494 U.S. 872, 881 (1990)

ANATASOFF v United States 223 F .3d 898

Constitutional rights are violated when courts depart from Precedent where parties similarly Situated. All litigants have Constitutinal right to have claims adjudicated to rule of Precedents Statements of counsel in their Briefs or Arguments are not Sufficient For Motion to Dismiss Or sumary Judgment Re; TRINSEY V. PAGLIARO D.C. PA. (1964), 229 F. Supp 647

ROBERT T .ORTEZ V, WASHIGTON county of Oregon No. 94-36036 NINTH CIRCUIT I am filing under title 7 civil rights act of (1964) sufficiently set forth a Title VII claim.

In KNAPP V. CITY OF COLUMBUS Ca.6 Ohio 2004 93 Fed. Appx 718, 2004 WL 44627 Fire Fighter sufficiently raise claim that city refusal to accommodate their disabilities violated title 1 Of the ADA even though complaint did not explicitly state title 1 and where complaint cited to statutory sections located in title 1 And with Regards to city's duty to provide Reasonable Accommodation.

In ELMOR V MC CAMMON 1986 640 F Supp 905 The Right to File Lawsuit Pro se is one of the most Important Rights Under Constitution Law.
Pro Se complaints are often Unfamiliar with the formalities of pleading requirements Recognizing this, the Supreme court has instructed the district courts to construe pro se complaints liberally and to apply more flexible standards in determining the sufficiency of a pro se

complaint than they would in reviewing a pleading submitted buy counsel See e.g. HUGES V. ROWE, 449 U.S. 5, 9-10 ,101 S.ct .173,175-176 LED.2d 163 (1980) (per curiam) Hanes V KERNER , 404 U.S. 519,520-521, 92 S.Ct. 594, 595-96, 30 L.Ed 652 (1972) (per curiam); see also ELLIOT V BRONSON 872 F.2D 20,21 (2D ccIR. 1989) In order to justify the dismissal of a Pro Se complaint, it must be "beyond doubt that the plaintiff can prove no set of facts Inn support of his claim which would entitle him to relief"

HANES V KERNER, 404 U.S. at 521,,92 S.Ct at 594 (quoting Conley Gibson ,355 U.S. 41-46, 78 S.Ct. 99 102, 2 L.Ed.2d 80 (1957)

Maty V. GRASSELLI Chemical Co 303 U.S. 197 (1938) Pleadings are intended to serve as a means of arriving at a fair and just Settlement They should not Raise Barriers to prevent that . This case Is about Someone with five Parts of his brain Damaged Being assaulted Losing 90

There are 28 Kids That The Nurse Gave double Immunization shots to. The One the only word She can Say Is Yes Wouldn't she Have a Hearing Impairment That should be accommodated Or Need an Interpreter .

Do you think It would be okay Not to Help this Woman Because You would not Like to or It would Take More time, Or don't like someone in Here class.
What Happens when Nobody tries to help here and she gives up.

I was a Construction Foreman fore Opus on a Us Bank Headquarters, Across the river From downtown Saint Paul.

Are work Radios always Picked up the airport traffic control towers conversations.
The Three people in charge Dick Orendorff Tom Turner And Bob Halverson I think It was Halverson He Died shortly after this.
All served in Vietnam together. While In the Job Trailer Dick and Tom Accused Bob of shooting His sergeant In the Back .

Every thing was derogatory Gook spick "N" etc None of the workers were ethnic except fore the Laborers . Bob Nelson was also a foremen and also Toms son.
I was working With Stan Gillman, On A Different Job While driving under the Hi bridge in Saint Paul, He told me they were going to Kill a Homeless Person the Bloomington Police Pulled them Over they were Very drunk. And the Police Just let them Go.
Stan Gillman's Friend was the caretaker of the Opus Lake Cabin, that's how Stan ended up with the Opus Family's Fishing Boat.

While working on the Paul Wellstone Battered Woman's shelter I met Chuck a carpenter that Worked With Tom And Dick Fore Opus A Long Time ago and Dale Worm .
Dale Worm Got the Wellstone job fore Weiss builders. And the Iron Workers Were the Same Individual's As on the Us Bank Job.

The owners sons friend Jeff was Dealing a lot of cocaine and the owners of Commercial Dry Wall were in Steamboat. When I Was assaulted. Rout County landscaping, Tie Land.
I was ontop of a later Jeff Knocked It over, He wanted to fight I walked away, He Pushed me very hard I fell foreword Landing on My Head, Hardhats Do not provide Much Protection From a foreword Fall, I was knocked unchonches He was Pushing me into the sheet rock Making big holes in it , He kept beating Me threw out Half the building Till a fellow emplye stoped him.
I went to the Bloomington police Department that morning, I thought they were arresting Him they did Nothing after repeated atempts.

I gave a Recorded statement to Federated Insurance They Forged it and the work comp judge denies Benefits fore years on Falsified transcrips.
Then I called the Police to make a police report Every thing was going Fine until I told him I had a Head and neck Injury Then he said If you Keep this up you'll get shot in the Back of the head with a 38 and he put his hand on His Gun I had my camera in My hand I Reported this to Paul Bermister the crime Victims Person He did Nothing the next day the Digital camera was stolen from My House.
I had a Traumatic brain Injury Documented buy the Mayo Clinic, I did not have The Best Judgement.
While at the departmeant of Laber and industry

2/29/04 Telling them about The Wellstone Vietnam stuff She sent me to the Union Said they'd Handle Everything.

The Union President Scott Malcolm Saw me I complained about all the KKK activity in the union When I brought up Tom, Dick, Dale and Bob Scott says he knew them and not to wory he gets threatened all the time he holds up an envelope and Said This one says it will be like, I cannot repeat it But it was a occurrence were a Lot of People were Injured.

So Scott has me talk to Rick, He also worked with Tom turner Dick Orendorff Dale Whorm fore Opus A long time Ago.

I Meet Shaw Mikay He is Good friends with Stan Gillman And connects the People I'm Hanging out with to Opus. I get assaulted And its documented Buy the Emergency room. And the police did Nothing to help me.

So much Later I'm Working fore Custom Drywall They did a different Paul Wellstone Project In saint Paul.

I sheet rocked three courtrooms.

buy my self fore custom drywall they Had These Huge Sofits above the court room They Added A lot of weight.

So 3DI Had the architects approve it would Hold the weight No extra truss was aded, a lot of people did not think it strong enough.

Then I'm working fore Brunswick the union provided me the Job they always went to the lake house to Party drink etc. I wouldn't go with them because I don't drink .

Wee had an unemployment hearing To decide

why Adam separated from Brunswick Dan says In the trial he never should have been working with a disability if it effects His work . Its right in the transcripts. So I have to pay back the unemployment Because its Untimely filed ! They refused to give me evidance it was untimely and They Lacked Jurisdiction to here the case if it was not timely.
With the amount of prejudice I encountered With brunswic It Feels Like they Are connected.

Custom has this 300,000 Million doller Job In Maui Kapula Bay I later Found out That Cindy Shiely Fore Us bank in saint Paul is financing it.
See they work around 20 hourse a week overtime all under the Table and pay in three checks.
Well the Day I left Fore Maui I sent the eight circuit court Breif with Infermation on the Paul Welstone Murder.
So I Started working Fore Group builders they also Did Work With Custom and Us bank On the Kapula bay Project.
I worked on the Lead core Honua Kai Job fore Group Builders.
I asked Ray fore Reasonable accommodation He sent me to work on the scafolding eleven stories Up, "You could see the Whales some days" and he sent me a new partner. Ten minuets later he tries to throw Me off the scafolding.

I was laid of a week later and I'm waiting fore A ride Home They empty the Portable Toilet, In the pond between the two buildings. And Spray the Job site with Dirty water. To Keep the dust down, He Backed the Spray Truck to Where My Tools and close were, I tried to stop Him He came running out of the truck Yelling I'm going to kill you I ran into the Superintendent Trailer And Locked Both doors he kept trying to get in. While back in Minnesota I'm working non Union at 745-? Summit Ave Cathy Bowman She says here two children worked with Paul Wellstone, I do not Beleave This to be True . She was showing me Pictures of a book and one Page was the KKK . I was looking up Mangan v Weinberg On the Eight circuits Web The Midle One was Cheaf Judge Bowman steped Down I saw Pictures Of the Bowman's With a Judge I think the Bomans and my Boss were trying to set Me Up with there House Keepers Then Cathy Wanted me to go Out With this Woman On Laurel Ave, I worked there. And The Boss is always working at Judy McCoy's Her Husband Is Very Political I was Told.
Then working on Feronia Ave, North of 94, East of Cretan Vandalia Exit Robs a Lobbyist fore congress.

The last Job Fore the Oberts on 235 Mt. curve. Wee Extended the Kitchen Four Feet and Put in a Beam to hold up the house. Wee Had a Four Inch wide Very Heavy Steel Hanger It Would

Not Fit So The Boss Puts On A One Inch steel Strap That is Thinner steel. And there's already A Half Inch Gap Between the Beams and this Holds Up All the Kitchen Ceiling And a young Girls Bedroom Is On top I told Him five times It was not strong Enough. The strap is still there Two Pounds of steel Is holding up What 25 Pounds was supposed to.
This is the same time the eighth circuit court decision Came Out, I've Been Back In Minesota About 7 Months at this Point.

I followed the Procedures I was excluded Just Because the Government Does Not Like Me or my class of People, The 40 percent of People with disabilities did not Finsh Hi school two thirds of People with disabilites are Unemployed, probably More in this Economy.
How Many did Not Finish Hi school , Or don't Work Because People Don't Like Them, There Picked On or Assaulted And the Government Or Mean People Think it Is acceptable to assault them Just because they do not Like them.
And the People with Mental Disabilites That Are Up to 140 times More Likely To Be Robed or Cheated and 12 Times More Likely to be assaulted or Raped, According to Department Of Justice Statistics, This Class Of People is the Class I rely wanted To Help They are Excluded Because There Not educated, But the Problem is Government Does not Like them There simply Not allowed to Sue Fore Right Or Ask Fore Accommodation, Because the Government Does

Not Hear There cases They Put them in Unpublished Opinions Without any Regard Fore The Law or Constitution.
Cathy told me why it was acceptable to Kill Paul Wellstone. So this case is of Great Public Importance to All the citezens who are treated unfairly Regardless of the Law or Constitution simply Because the government does Not Like Them.
So this class of People is everyone the Government does Not Like or want to Help

Or excludes regardless of the Law simply because they do not Like them or care more about Finachule Gain then Helping People.
So its a class action Not fore Money But Fore Justice and if you belong to this class Peacefully Join In.

Page 13 of My amended complaint Docket 44 States.

1331 Federal Question The district court shall have original Jurisdiction Of all civil actions arising out of the constitution.
Statute 28 U.S.C 1441 I gave notice of Removal of case Because of Subject Matter jurisdiction Because of alleged Violations Of the Constitution and ADA Law.
Judiciary Act of 1789 Article 111 . Of the United States Constitution Gives US Congress the Power to Permit Federal Courts To Hear this Case.
Justice Brennan determined there must Be a

remedy Fore Every Wrong.
42 U.S.C. 2000e-4 Individuals can bring a private Law Suite Title VII
12101 The Power to enforce the 14th Amendment and to Regulate Commerce To Address Major areas of Discrimination.
Then on Page 14
12101 Title 42 chapter 126 To ensure that the Federal Government Plays a central role in enforcing the standards of this chapter on behalf of individual With disabilities.
Freedom to petition for a Redress of Grievances Guaranteed Buy the First Amendment Protected the 14th Amendment U.S. Supreme Court Ed wards V. South Carolina, 372 U.S. 229 (1963)
12101 Title 42 Chapter 126 to Ensure the Federal Government / Enforcing

"End Quoting complaint."
The attorney General files a 12(b)(6) Motion Frailer to state a claim, Its Granted a hearing is set. I'm Led to Believe this Hearing is About things Like: I Have a disability I was Denied An Accommodation I was discriminated aginst Because of my disability all In violation Of the ADA.
But Honorable Anne Montgomery Is Not considering Evidence including what I am Saying Or wrote In My complaint. Because she Lacks Jurisdiction to consider Anything.
Because Its A Rule 8(a)(1) Hearing, No Jurisdiction statement. Nobody Gives any notice Its a 8(a) Hearing till there are seconds Left In the Hearing, Honorable Anne Montgomery Then

Says This Hearing is about Jurisdiction and Inserts A jurisdiction of here choosing and Does Not consider My Jurisdiction Statements in complaint,
; 28 U.S.C 1441 & 28 U.S.C 1331 , 28 U.S.C And 28 U.S.C 1443 In Notice of Removal. These Are Proper jurisdiction Statement's. Along with the Law Judiciary Act of 1789 article 111 Honorable Anne Montgomery Does Not Regard them. And the eight circuit affirmed There fore They do Not Regard The constitution or the Law judiciary act of 1789 article 111 there fore they Have No Jurisdiction to operate. Because there Jurisdiction came from the Law Judiciary act of 1789 and that came from Congress, the Constitution Authorized Congress To create the Law Judiciary act 1789 article 111 and the Inferior courts. And When the courts do not Regard the Act of 1789 or the Constitution or Evidence of constitutional Subject Mater It Becomes a Non Constitutional court. The Jurisdiction Statements are proper Nobody Gives Me Notice its an 8a(1) Hearing and That Rule Is Not in the Local Rules. Even If you do It right the courts Exclude you Like on My Other Lawsuit Against Us Bank The Last time In Court With Us Bank I had 4 Valve stems Leaking And Blew A Tire Out on the Interstate that Morning So I rote the eighth circuit About More Wellstone Information And To 3 other Organizations on 3/3/09 I received A notice Of a Hearing Fore Summery Judgment on 4/17/09 And I Receive The Motion to Have the Hearing

on the Same Day
And they will Not Let me submit Evidence Or Reply To My Motions to compel Discovery Fore Months But Fagre and Benson Gets Same Day Service The Magistrates Last Name is Nelson I bet there all Involved with Us Bank Bowman. Citizens Have No rites Or Voice In court And that is not constitutional. Where were Paul Welstones and Congress's Constitutional rites to Feel safe and secure, Protected and due Process. Its like they Made a game out of it.

9/20/06 Memorandum Jenifer Paterson , In

evidence Docket 44 Submitted Buy the Attorney General.
4. A Minnesota Compensation judge Has no subject matter jurisdiction to hear and decide issues that arise under the Federal Americans With Disabilities Act. The Employees claims that he has been impermissibly discriminated against as defined by the ADA because of His Mental or brain disability can only be pursued in an appropriate federal forum.

5. A Minnesota workers Compensation Judge is part of the executive branch of government and has no Jurisdiction to Rule on the Constitutionality of provisions of chapter 176 of Minnesota Statutes. The employees claim that the Minnesota Workers Compensation System has Denied Him equal protection of law or due process of law because he has not had an equal opportunity to participate in court proceedings

Because of His Mental Disabilities, Is Preserved for appeal to the Minnesota Supreme Court.

System of Georgia No 01-298 2/25/02 States voluntary Appearance in Federal court Amounts to Waver of Eleventh Amendment Immunity Clark V. Barnard 108 U.S. 436,477 , Gardner V. New Jersey 329 U.S. 565 also see Gunter V. Atlantic Coast Line R.co 200 U.S. 273, 284

Statement 5. Is in transcripts From the work comp Trial Where she Just Leaves out the words Minnesota Supreme court When Jennifer is reserving the Appeal,
I was not allowed to submit this evidence. I tried to Submit Evidence Four times Buy amending My complaint to add Evidence They File It In the Trash can, The Notice of Removal Notarized, certified sent Is not in the Docket. Constitutional Evidence Not Received Either. Below it Says supporting Evidence was not considered this Includes Every thing I Said and Wrote .
Quoting Anne Montgomery Memorandum order 7/6/07 page 3
Plaintiffs supporting evidence is Unnecessary and unhelpful at the pleading Stage Further even if it were considered it would not affect the adjudication of defendants Motion to Dismiss.
On Page 6 she Wrights Plaintiffs only cognizable claim for Damages against the defendants For Violation of the federal

constitution is an action under 42 U.S.C. 1983 However 42 U.S.C. 1983 does not abrogate the states Eleventh amendment Immunity. Therefore constitution claims Must be Dismissed.

Honorable Ann Montgomery And the Eighth circuit do not consider The Jurisdiction statements 28 U.S.C 1441 Or 28 U.S.C 1331 Or 28 U.S.C. 1443 or the Law Judiciary act of 1789 Which came from the constitution Or evidence Of the state Abrogating Its eleventh Amendment Immunity or the rite to present it Garentted Buy the constitution.

Anne Wrights Plaintiff Conclusorily Alleges : The Definition Of Conclusorily Is lacks Supporting Evidance
So when the eight circuit does not Recognize The Law Judiciary act of 1789 article 111 Or 28 U.S.C 1443 as evidence or Jurisdiction Then Where does its Jurisdiction come From? It comes from there own self interests and not the Constitution. Making it an non Constitutional court That is acting without Jurisdiction When Equail Protection Of the Laws Is Applied, The Right Of Equil Protection Of The Laws Is Secured Buy the United states Constitution .

I Submitted Documentation Evidence 4 Times evidence the state abrogated its 11th Amendment Imunity. So the district court does not Recognize the constitution Evidence Or Jurisdiction Statements Including The Law Judiciary Act of 1789 article 111 As Basis fore a Lawsuit, then they become a non constitutional court

Because they Have No Basis To operate. Because they refuse to let citizens Petition for redress of grievances, Privilege to petition is protected buy the fist amendment to the Constitution Protected buy the 14th amendment

Honorable Anne Montgomery writes plaintiffs amended complaints none come close to meeting the shot plain statements required buy Rule 8(a) There is no Basis in any of plaintiffs fillings that would allow him to State a Viable ADA Claim

Basis : Means an Underlying condition.

Which is A Jurisdictional Statement Rule 8(a)(1)

The Basis That would allow Me to Filling this Lawsuit Are The Constitution and the law Judiciary act of 1789 article 111 and 28 U.S.C 1443 And 28 U.S.C 1441 and 28 U.S.C. 1331 The law Judiciary act of 1789 article 111 the United states Constitution Gives US Congress The Power to permit the Federal courts to hear this case Honorable Anne Montgomery and the Eighth circuit do not consider 28 U.S.C. 1441 and 28 U.S.C 1443 and U.S.C 1331 Or the Law Judiciary act of 1789 article 111 The Eighth circuit Does not Recognize theses statutes as a Basis fore jurisdiction and these laws came from the constitution And Gave the Inferior courts jurisdiction, So the Eighth circuit Affirmed they do not recognize the act of 1789 so they are not operating a constitutional court and no longer Have Jurisdiction Because they do not Recognize the Statute that gave them Jurisdiction the Law judiciary act of 1789 article 111 So they Have no Basis to operate. I move

Fore the supreme court or Congress Who has the Power to define there Jurisdiction or withhold Jurisdiction Because the court Has no Basis In witch to operate And does not Regard The Constitution. I move that The Supreme Court or congress Define this courts Jurisdiction. Citizens have No rites that are guaranteed buy the constitution You can Have the Best Evidence, It will not be considered or Listed in an Opinion And If you Follow the right procedure, It Rely does not Matter There is no accountability You have no rites unless you're rich, Or belong to a group. Citizens Don't Right the court Opinions and Judges Right Anything they Want. I Think Citizens Should be Able To Have A voice In the Opinion, Like I could Have Wrought What Gave the court Jurisdiction Or Mentioned A Traumatic Brain Injury Report Otherwise its Just Propaganda.

Governments primary Role Is to protect the people and the Eight circuit is not fulfilling this role Of protecting People or Congress. The Constitution Authorized Congress to create the Inferior courts and created the Judiciary law Act of 1789 article 111, Congress was also empowered to define their Jurisdiction and to withhold there Jurisdiction of any of the enumerated cases and controversies In Article III . Section 2 U.S. Constitution. (a) Cases arising under the constitution
When its citizens peacefully so Demand.

CONCLUSION

The Judgment of the Eighth Circuit Should Be Reversed, And the Case Sent Back Fore Trial in federal court or The supreme Court should hear This case, And the supreme Court and Congress Should Withhold or Redefine the inferior courts jurisdiction So this does Not Happen again. Or whatever they Deem Apropreate.

The American People Deserve an Apolegy.

You Should not Disregard What made You.

3/6/09

Adam Stacy

123

(2)

Supreme Court, U.S.
FILED

081189 MAR 6 - 2009

OFFICE OF THE CLERK

In the
Supreme Court Of The United States.

APS

V.

Minnesota Department of Labor
&
Office of Administrative Hearings

On Petition for Writ Of Certiorari to The United States Court Of Appeals For The Eighth Circuit.

SUPLEMENTAL APENDIX

Pro Se
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United States Court Of Appeals
FOR THE EIGHTH CIRCUIT

No. 07-2850

APS,	*	
Appellant	*	
V.	*	Appeal from the
Minnesota Department Of Labor, Office of Administrative Hearings	*	United States District Court for the District of Minnesota.
	*	
Appellees.	*	[UNPUBLISHED]

Submitted : December 29, 2008
Filed : January 14, 2009

Before MELLOY, COLLOTON, and SHEPHERD, Circuit Judges.

PER CURIAM.

Appellant "APS" appeals the district court's dismissal of his complaint brought under the Americans with Disabilities Act. Upon careful review, we affirm for the reasons explained by the district court. See Carter v. Arkansas, 392 F.3d 965, 968 (8TH Cir. 2004) (dismissal under Fed. R. Civ. P 12 (b)(6)); Mangan v. Weinberger, 848 F.2d 909, 911 (8th Cir. 1988) (Dismissal

under Fed. R. Civ. P. 8(a)).

---

1 The Honorable Ann D. Montgomery, United States District Judge for the District of Minnesota.

Additionally, the district court properly denied leave to further amend the complaint, also for the reasons explained by the court.

Accordingly, wee affirm the judgment. See 8TH Cir. 47B.

Case 0:06-cv-04495-ADM-RLE Document 61
Filed 07 / 06 / 2007

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

APS,

Plaintiff,

MEMORANDUM OPINION
AND ORDER

V. Civil No. 06-4495 ADM/RLE

Minnesota Department of Labor,
And Office of Administrative Hearings,

Defendants.

Adam P. Strege, pro se.

Sarah A. McGee, Esq., Assistant Minnesota Attorney, St Paul, MN, argued on behalf of Defendants

---

I. INTRODUCTION

This matter is before the undersigned United States District Judge to consider Defendants Minnesota Department of Labor ("Department of Labor') and Office of Administrative Hearings' ("OAH") (collectively, " Defendants") Motion to Dismiss [Docket No. 23] and Plaintiff A P S ' s ("Plaintiff') Appeal [Docket No. 57] from Magistrate Judge Raymond L. Erickson "s

18, 2007, Order [Docket No. 52] denying Plaintiff's "Motion to Amend Complaint to 15 pages plus 89 Pages Supporting Evidence" [Docket No. 50]. For the reasons set forth herein, Defendants' Motion is granted and Plaintiff's appeal is Denied.

II. BACKGROUND

Although it is not entirely clear from Plaintiff's Complaint, it appears that his claims arise from a workers' compensation proceeding. In support of their motion to Dismiss, Defendants have attached the relevant order from those proceedings. See McGee Decl. [Docket No. 31] Ex. 2. This Court will consider the order to the extent it provides useful background

Facts.

On March 18, 2004, Plaintiff was employed by Commercial Dry Wall, Which Had Workers' compensation insurance with Federated Insurance Mutual Group (" Federated Insurance "). Id. At 2. On March 18, Plaintiff and co- worker engaged in a physical altercation during which Plaintiff was pushed, fell backward, and hit his head and left shoulder on a wall. Id. At 4. Plaintiff filed a workers' compensation claim seeking Benefits for a neck Injury and an alleged brain injury that affected his emotions and behavior. Id. At 7. Plaintiffs claim was heard on September 13, 2006, Before the State of Minnesota OAH Id. at 1. On October 20, 2006, an OAH Compensation Judge issued an order finding that Plaintiff had

sufficiently proven that the March 18, 2004, altercation caused a neck injury. Id. At 6. Based on Plaintiff's neck injury, the Compensation Judge ordered Commercial Dry Wall and Federated Insurance to pay Plaintiff temporary total disability benefits for the period of March 25 through July 15, 2004. Id at 7. However, the Compensation Judge found that Plaintiff did not provide sufficient medical evidence that the March 18 altercation caused a brain injury. Id. Therefore Plaintiff was awarded no workers' compensation for the treatment of his alleged brain injury. Id at 8. Plaintiff did Not pursue an administrative appeal. Instead, he filed the instant action on November 13, 2006. Complaint [Docket No. 1]'

Commercial Dry Wall and Federated Insurance Filed an administrative appeal on November 6, 2006. McGee Decl. Ex. 3. However, they voluntarily dismissed the appeal in December 2006. .

III DISCUSSION

A. Plaintiff's Appeal

The History of Plaintiff's attempts to amend his pleading is thoroughly set forth in Chief Magistrate Judge Raymond L. Erickson's June 18, 2007 order. That discussion is incorporated herein by reference. In short, on November 13, 2006, Plaintiff Filed a two-page Complaint, alleging disability discrimination and failure to

accommodate under the Americans with Disabilities Act ("ADA"), 42 U.S.C 12112(a), (b)(95)(A), and the Rehabilitation Act, 29 U.S.C 701 - 796. Although difficult to discern, it appears that the crux of Plaintiff's ADA and Rehabilitation Act claims is that Defendants effectively excluded him from participating in the workers' compensation proceedings by failing to adequately accommodate his alleged mental disability. After defendants moved to dismiss on April 30, 2007, Plaintiff filed his First Amended Complaint [Docket No. 37 on May 15, 2007. Subsequently, pursuant to leave granted by Judge Erickson, Plaintiff filed a Second Amended Complaint [docket No 44] on May 29, 2007. On June 11, 2007, Plaintiff filed his "motion to Amend Complaint to 15 pages plus 89 Pages supporting Evidence" ("Motion to Amend"). In his June 18, 2007, Order, Judge Erickson denied Plaintiff's Motion. On June 21 2007, Plaintiff filed his Appeal.

Although leave to amend "shall be freely given when justice so requires," Fed. R. Civ. P 15(a), this Court agrees with Judge Erickson that Plaintiff S Motion should be denied. Plaintiff s supporting evidence, which consists of a scattershot collection of documents, is unnecessary and unhelpful at the pleading stage. Further, even if it were considered, Plaintiff's supporting evidence would not affect the adjudication of Defendants Motion to Dismiss. Therefore, Plaintiff's Appeal is denied and the court will determine whether Plaintiffs's May 29, 2007, Second Amended Complaint survives

Defendant 's Motion to Dismiss [2]

---

[2] Although Defendants moved to dismiss plaintiff's initial Complaint, Defendant 's counsel agreed at oral argument that Defendant 's Motion and brief apply equally to Plaintiff 's Second Amended Complaint.

B. Defendants ' Motion to Dismiss

1. Pleadings and Motion to Dismiss Standards

Under Rule 8(a) Of the Federal Rules of Civil Procedure, Pleadings setting forth a claim for relief must include "a short and plain statement of the claim showing that the pleader is entitled to relief." "The essential function of notice pleading ' is to give the opposing party fair notice of the nature and basis or grounds for a claim, and a general indication of the type of litigation involved." N. States Power Co. v. Fed. Transit Admin., 358 F.3d 1050, 1056-57 (8th Cir. 2004) (citation omitted).

Rule 12 of the Federal Rules of Civil Procedure provides that a party may move to dismiss a complaint for Failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12 (b)(6). In considering a motion to dismiss, the pleadings are construed in the light most favorable to the nonmoving party, and the facts alleged in the complaint must be taken as true. Hamm V. Groose, 15 F.3d 110, 112 (8th Cir. 1994); Ossman v. Diana Corp., 825 F. Supp. 870, 879-80 (D, Minn. 1993). Any ambiguities

concerning the sufficiency of the claims must be resolved in favor of the nonmoving party. Ossman 825 F. Supp. At 880. "A motion to dismiss should be granted as a practical matter .. Only in the unusual case in which the plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief." Frey v. City Of Herculaneum, 44 F.3d 667, 671 (8th Cir. 1995). Pro se complaints are to be construed liberally. Estelle v. Gamble, 429 U.S. 97, 106 (1976). However, a pro se complaint must still allege specific facts to support its conclusions. Martin v. Sargent 780 F.2d 1334, 1337 (8th Cir 1985).

2. The Second Amended Complaint

Plaintiff's Second Amended Complaint is Rambling, garbled, and difficult to decipher. Plaintiff conclusorily alleges that he was denied the right to hire a lawyer during the workers' compensation proceeding, his Mental disability was not adequately accommodated, certain tape recordings of his statements were altered by Federated Insurance, the Compensation Judges Findings were not supported by the evidence, the department of Labor Lacks adequate grievance procedures, Plaintiff's private information was improperly disclosed. In addition to the afore mentioned ADA and Rehabilitation Act claims, The Second Amended Complaint alleges violations of procedural and substantive due process under the First Amendment, the right to petition the government for redress of

grievances under the first Amendment, and Equal Protection Clause.

Plaintiff's constitutional claims against the Minnesota Department of Labor and the Office of Administrative Hearings are barred by the Eleventh Amendment. The Eleventh Amendment stated that "[t]he Judicial power of the United States shall not be construed to extend to any suit in Law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." The Supreme Court interprets the Eleventh Amendment to prohibit suits in federal court against an unloosening state or one of its agencies or departments. Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100-101 (1984). A state may be sued in federal court if it has consented or if Congress has abrogated its immunity. Here, Plaintiff's only cognizable claim for damages against Defendants for violation of the federal constitution is an action Under 42 U.S.C. 1983. However, 42 U.S.C. 1983 does not abrogate the states Eleventh Amendment immunity. Quern v. Jordan, 440 U.S. 332, 334 (1979), and the State of Minnesota has not consented to 1983 suits in federal Court. Therefore, Plaintiffs constitutional claims must be dismissed.

---

3 plaintiff's supporting evidence shows that Plaintiff initially retained counsel in the workers' compensation proceedings. However, his counsel withdrew on March 29, 2006, in part because of

Plaintiff's persistence in filing complaints with various state agencies without consulting with his counsel. See Motion to Amend, Attach. At 83-86. Thereafter, Plaintiff proceeded pro se.

Plaintiff's ADA and Rehabilitation Act claims must also be dismissed because the Second Amended Complaint Fails to Make any "short plain statement[s]" showing that Plaintiff is entitled to relief under those statutes. Even when liberally construed, the allegations in the second Amended Complaint fail to give each Defendant notice of the grounds upon which Plaintiff"s ADA and Rehabilitation Act claims rest. Plaintiff is obviously dissatisfied with the outcome of his workers' compensation hearing. However, the Second Amended Complaint's conclusory allegations fail to meet even the minimal pleading standards set forth in Federal Rule of Civil Procedure 8(a). Therefore, Defendants' Motion to Dismiss is granted

Further, the Court finds that Plaintiff's Amended Complaint should be dismissed with prejudice. Plaintiff has submitted multiple amended complaints And none come close to meeting the "short and plain statement" requirement of Rule 8(a). There is no basis in any of Plaintiff's filings that would allow him to state a viable ADA or Rehabilitation Act

claim. On these facts, further amendment would be futile. See knapp v. Hanson, 183 F.3d 786, 790 (8TH Cir 1999) (noting that "futility constitutes a valid reason for denial of a motion to amend")

IV. CONCLUSION

Based upon the foregoing, and all the files, records, and proceedings herein, IT IS HEREBY ORDERED that:

1. Plaintiff's Appeal [Docket No. 57] is Denied; and

2. Defendants Minnesota Department of Labor and Office of Administrative Hearings Motion to Dismiss [docket No. 23] is GRANTED; and

3. Plaintiff's Second Amended Complaint [docket No. 44] is DISMISSED WITH PREJUDICE.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT

S/Ann D Montgomery

ANN D MONTGOMERY
U.S. DISTRICT JUDGE

Dated July 6, 2007

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

* *

APS,

Plaintiff,

ORDER

Vs.

Minnesota Department of
Labor, and office of
Administrative Hearings,

Defendants.

Civ. No. 06-4495 (ADM/RLE)
June 18 2007

* *

This matter came before the undersigned United States Magistrate Judge pursuant to a general assignment, made in accordance with the provisions of Title 28 U.S.C 636(b)(1)(A), upon the Plaintiff's submission of a self-styled Motion to Amend Complaint. See, Docket No. 50.

The plaintiff, who is proceeding pro se, commenced this action by filing a Complaint, and paying a filing fee, on November 13, 2006.

He seeks relief for The Defendant's alleged violations of the Fourteenth Amendment, and Title II of the Americans with Disabilities Act. See, Complaint, Docket No 1, at p. 1.

Since The date of his original filing, the Plaintiff Has made several attempts to amend his Complaint. On May 15, 2007, the Plaintiff filed an Amended Complaint with the Clerk of Court, see, Docket No. 37, and on May 17, 2007, we issued an Order acknowledging the Plaintiff's right to file, and serve, an Amended Complaint under Rule 15(a), Federal Rules of Civil Procedure, as no responsive pleading had been served in this matter at that time. See, Docket No. 38.

On May 18, 2007, Plaintiff Filed a "Motion to File a New Complaint," in which he stated that the document that he previously submitted as his Amended Complaint was, In Fact, merely a compilation of evidence in support of his position, and asked that he be allowed to cull nineteen (19) pages from that previous filings to constitute his Amended Complaint. See, Docket No. 39. By order dated May 21, 2007, see, Docket No. 40, we granted the Plaintiff's request to resubmit those nineteen (19) pages To constitute his Amended Complaint. However, at that time, we emphasized to the Plaintiff that we were not granting him leave to file any new or additional documents with the Court, but were merely allowing him to narrow his earlier filings so as to better express the substance of his claims in this matter.

On May 23, 2007, the Plaintiff filed a twenty-nine (29) page document with the Clerk of Court that was labeled "Amended Complaint." See Docket No. 41. We directed the Clerk of court to strike Docket No. 41 for non-compliance with our previous Orders. On May 29, 2007, the Plaintiff filed a fifteen (15) page Amended Complaint, see, Docket No 44, that we accept as the Plaintiff's final Amended Complaint. However, on June 4, 2007, the Plaintiff filed still another Amended Complaint, see, Docket no. 47 that, together with attachments, was one hundred and seven (107) pages long. At that time, we issued an Order, in which we explained that we had already accepted the (15) page Amended Complaint, that was filed on May 29, 2007, as the Plaintiff's last Amended Complaint and, if the Plaintiff sought further leave to amend his Complaint, he would have to follow the formal Motion practice, and seek leave of the Court to do so.

On June 11, 2007, Plaintiff submitted a Motion to Amend Complaint, see, Docket No. 50, In which, once again, he asks Court leave to amend his Complaint. We have reviewed the Plaintiff's proposed Amended Complaint, Which is attached to his Motion to Amend, and we find that it is substantively identical to the Amended Complaint that we have already accepted as the Plaintiff's last Amended Complaint. For that reason, we deny the Plaintiff's Motion as moot.

Finally, in response to the Plaintiff"s apparent confusion regarding the date of his next Court

appearance, we remind the Plaintiff that a Hearing on the Defendants' Motion to Dismiss will be held Before the District Court, The Honorable Ann D. Montgomery presiding, In Minneapolis, Minnesota, at 9:00 o' clock a.m., on June 26, 2007. See, Docket No. 24.

NOW THEREFORE, It is -

ORDERED :

That the Plaintiff 's Motion to Amend Complaint [docket no. 50] is DENIED as moot.

BY THE COURT;

Dated; June 18, 2007

Raymond L. Erickson
Chief U.S. Magistrate Judge

BEST AVAILABLE COPY

State of Minnesota — Ramsey District Court

9-30-08.

CITY OF SAINT PAUL

Picture

Citation No 808082825

ST PAUL POLICE DEPT

License Number	State	Plate Year
TGG244	MN	2009

Color RED

Make HOND Body Style 2D

Date of Offense 08/07/2008 Time 09:45

Offense 1 169.79.7 $111.00

Parked - displaying license plate - obscured plate violation

08-26-08 A09117 IN

Total Due: $111.00

Location
506 EB SUMMIT AV

Beat 974 SURFACE PARKING

Comments
PLATE COVER ON FRONT AND REAR PLATE

Officer 1 Buzicky, P

Officer Number 88650

Report defective meters by noon the next business day
Call (651) 266-8126
To pay your fine by credit card, wait 10 business days and then call
(651) 266-9202